IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 282 of 1998

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BHUJ MUNICIPALITY - Petitioner(s)

Versus

GUJARAT STATE TRANSPORT CORPORATION &2 - Respondent(s)

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Appearance :

MR YS MANKADfor Petitioner No(s).: 1.
MR DIPEN A DESAI for Respondent No(s).: 1.
RULE SERVED for Respondent No(s).: 2.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 22/06/2005

ORAL JUDGMENT

1. Instant petition under Section 115 of the Code of Civil Procedure ('the Code' for short) is filed against the order dated 23.12.1997 recorded below application exh. 51 in Special Civil Suit No. 252 of 1993 by the learned 3rd Joint Civil Judge (SD), at Bhuj, by which the application filed by the petitioner under Order 7 Rule 11 of the Code to reject the Special Civil Suit No. 252 of 1993 filed by the respondent summarily on the ground that the efficacious alternative remedy under Section 138 of the Gujarat Municipalities Act is available to the respondent, has been rejected.
2. Mr. Y.S.Mankad, learned advocate of the petitioner contended that respondent has challenged the bill of the house tax and education cess sent by the petitioner to the respondent. The respondent should have challenged the said bill by filing appeal under Section 138 of the Act, instead the respondent has filed Suit for declaration and injunction which is not maintainable. Therefore, according to him the impugned order deserves to be quashed and set aside by allowing this Civil Revision Application and thereby to grant the application exh. 51 submitted by the petitioner and to reject the Suit summarily.
3. In support of the aforesaid contention he pressed into service the reported judgement in the case of Muljibhai Champaklal Shah v. State of Gujarat and another, page 635.
4. This Court has considered the submissions advanced by Mr. Y.S.Mankad, learned advocate of the petitioner, perused the impugned order and the judgement cited at the bar.
5. It may be noted that on perusal of the Plaint, more particularly paragraph 7, the respondent – plaintiff has alleged that the petitioner has not followed the required procedure as per law while preparing the bill. Petitioner has not issued notice while preparing the bill, therefore under Section 9 of the Code, according to this Court, Suit would be maintainable. Therefore, the learned trial Judge has very rightly held that the grounds of appeal filed under Section 138 of the Act could be those only regarding which objection could be taken in the inquiry. The petitioner – Bhuj Nagar Palika had never made inquiry by issuing notice to the respondent – plaintiff before preparing the bill. Therefore, the question whether the bill did not comply with the provisions of Section 132 or the legality of assessment for want of publishing or sanction of the Government to the bye-laws or failure to follow the procedure regarding amendment or alteration of assessment list cannot be raised in appeal or revision and the best remedy will be to file a Civil Suit.
6. The judgement relied upon by the learned advocate of the petitioner in the case of Muljibhai Champaklal Shah (supra) lays down the law that

the appeal under Section 138 of the Act held maintainable. This Court has not said that the Suit would not be maintainable.

7. In view of the aforesaid discussion, the Civil Revision Application lacks merit and deserves to be rejected.

8. For the foregoing reasons, the Civil Revision Application fails and accordingly it is rejected with no order as to costs. Rule is discharged. Interim relief granted earlier shall stand vacated.

9. At this stage Mr. Y.S.Mankad, learned advocate of the petitioner urged that the interim relief granted while issuing rule, which was operative till today, may be extended for a period of 6 weeks to enable him to approach the higher forum. According to this Court there is no substance in the prayer, hence the same is rejected.

(A.M.Kapadia,J)

Jayanti*